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 California State Bar No. 70988
 2 DONALD R. WORLEY, Assistant City Attorney
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 California State Bar No. 178311
 6 Office of the City Attorney
 1200 Third Avenue, Suite 1620
 7 San Diego, California 92101-4178
 Telephone: (619) 236-6220
 8 Facsimile: (619) 236-7215
 Attorneys for Respondent
 9 CITY OF SAN DIEGO

10 STATE OF CALIFORNIA

11 PUBLIC EMPLOYMENT RELATIONS BOARD

12	DEPUTY CITY ATTORNEYS)	Case No. LA-E-752-M
	ASSOCIATION,)	
13)	DECLARATION OF DONALD R. WORLEY
	Charging Party,)	IN SUPPORT OF RESPONDENT CITY OF
14)	SAN DIEGO'S MOTION TO DISQUALIFY
	v.)	PERB BOARD AND STAFF OF PERB
15)	OFFICE OF GENERAL COUNSEL
	CITY OF SAN DIEGO,)	
16)	
	Respondent.)	
17)	

18 I, Donald R. Worley, declare:

19 1. I am an attorney duly licensed to practice before the courts of the State of
 20 California and an Assistant City Attorney with the City of San Diego (City).

21 2. On January 27, 2012, the San Diego Municipal Employees' Association (MEA)
 22 served the City with an Unfair Practice Charge filed with the California Public Employment
 23 Relations Board (PERB) regarding a citizen initiative petition to amend the City Charter, known
 24 as the "Comprehensive Pension Reform (CPR) Initiative."

25 3. On January 30, 2012, MEA served the City with its Request for Injunctive Relief,
 26 filed with PERB, Case No. LA-CE-746-M, regarding the CPR Initiative.

27 4. On February 2, 2012, the City filed with PERB its Response to MEA's Request
 28 for Injunctive Relief.

1 5. On February 10, 2012, PERB sent the City a nine-page document by facsimile
2 that included two letters: (1) Letter from PERB General Counsel dated February 10, 2012,
3 regarding Injunctive Relief request (February 10, 2012, Letter from PERB General Counsel) and
4 (2) Cover Letter, Complaint (Complaint LA-CE-746-M), and Notice of Informal Conference. A
5 true and correct copy of the facsimile received by the City is attached as Exhibit A to this
6 Declaration.

7 6. The February 10, 2012, Letter from PERB General Counsel states: "By direction
8 of the Board, the request for injunctive relief in the above-entitled matter is GRANTED. By
9 further direction of the Board, the General Counsel shall: (1) immediately initiate an action for
10 appropriate injunctive and writ relief in San Diego Superior Court; and (2) expedite
11 administrative proceedings on Unfair Practice Charge LA-CE-746-M." The letter was signed by
12 M. Suzanne Murphy, General Counsel, PERB.

13 7. On February 10, 2012, Complaint LA-CE-746-M was issued by PERB General
14 Counsel on behalf of PERB, based on charges by MEA, alleging that the City violated the
15 Meyers-Miliias-Brown Act. PERB Deputy General Counsel Wendi L. Ross signed Complaint
16 LA-CE-746-M.

17 8. On February 14, 2012, PERB filed a Complaint for Injunctive Relief and Verified
18 Petition for Writ of Mandate against the City in *Public Employment Relations Board v. City of*
19 *San Diego*, San Diego Superior Court Case No. 37-2012-00092205-CU-MC-CTL (PERB Writ
20 Petition). The PERB Writ Petition was signed by Deputy General Counsel Wendi L. Ross. A true
21 and correct copy of the Complaint for Injunctive Relief; Verified Petition for Writ of Mandate is
22 attached as Exhibit B to this Declaration.

23 9. On February 15, 2012, PERB filed an Ex Parte Application for a Temporary
24 Restraining Order and Order to Show Cause Regarding a Preliminary Injunction (PERB TRO
25 Application). The PERB TRO Application included a Declaration of Wendi L. Ross in support
26 of the Application. A true and correct copy of the PERB TRO Application, without supporting
27 exhibits, is attached as Exhibit C to this Declaration.

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1 10. On February 21, 2012, PERB Deputy General Counsel Wendi L. Ross, together
2 with MEA attorney, Fern M. Steiner, appeared in Department 67 of the Superior Court, the
3 Honorable William S. Dato, judge presiding, to support the PERB TRO Application to
4 “immediately, and in all events prior to March 9, 2012, take all necessary steps to remove the
5 Proposition – Charter Amendment/Comprehensive Pension Reform for San Diego.”

6 11. PERB’s TRO Application and Writ Petition seek precisely the same relief sought
7 by MEA in Complaint LA-CE-746-M.

8 12. City was not given the opportunity to be heard by PERB before PERB's filing of
9 the lawsuit or its application for a temporary restraining order and preliminary injunction. I am
10 informed and believe that PERB acted on these matters solely on the basis of the MEA complaint
11 and legal advice from its General Counsel that it was reasonably likely an unfair practice had
12 occurred, which advice had no support in current law.

13 13. In the above-referenced case (LA-CE-752-M), Charging Party has alleged the
14 City violated its duty to meet and confer with Charging Party before placing the CPR Initiative
15 on the June 2012 ballot.

16 14. By letter dated February 15, 2012, Charging Party requested that PERB seek an
17 order on Charging Party’s behalf, “enjoining the City from putting out to a vote the so-called
18 Comprehensive Pension Reform ballot initiative (“CPR Initiative”).” Charging Party also
19 requested “to join in the request for injunctive relief made by [MEA], unfair practice charge
20 number LA-CE-746-M, injunctive relief request number 615.”

21 15. PERB’s TRO Application and Writ Petition seek the same relief sought by
22 Charging Party in Complaint LA-E-752-M.

23 ///

24 ///

25 ///

26 ///

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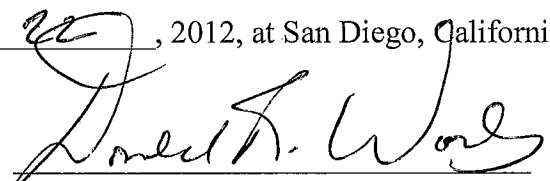
1 16. On March 9, 2012, M. Suzanne Murphy, PERB General Counsel, responded to
2 Charging Party's request of PERB to seek injunctive relief, by notice (Response to Injunctive
3 Relief Request No. 617), as follows: "By direction of a majority of the Board, Member Dowdin
4 Calvillo dissenting, the request for injunctive relief in the above-entitled matter is GRANTED.
5 By further direction of the Board majority, the General Counsel shall: (1) take appropriate action
6 to effectuate this determination in San Diego Superior Court; and (2) expedite the administrative
7 proceedings on Unfair Practice Charge LA-CE-752-M." A true and correct copy of the Response
8 to Injunctive Relief Request No. 617, is attached as Exhibit D to this Declaration.

9 17. I am informed and believe that PERB acted on these matters solely on the basis of
10 allegations of Charging Party and MEA and legal advice from its General Counsel that it was
11 reasonably likely an unfair practice had occurred, which advice had no support in current law.
12 City was not given an opportunity to be heard by PERB before the PERB Board took the action
13 it did in response to the Charging Party's request for injunctive relief.

14 I have personal knowledge of the facts set forth in this Declaration, and declare them to
15 be so. If called as a witness, I could and would testify competently thereto, except as to those
16 matters stated upon information and belief, and as to those matters, I believe them to be true.

17 I, as agent for Respondent City of San Diego, declare under penalty of perjury under the
18 laws of the State of California that the foregoing Declaration is true and correct to the best of my
19 knowledge and belief.

20 This Declaration was executed on March 22, 2012, at San Diego, California.


DONALD R. WORLEY

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27
28

EXHIBIT A



PUBLIC EMPLOYMENT RELATIONS BOARD
FACSIMILE TRANSMITTAL SHEET

TO:

Fern M. Steiner, Attorney
Tosdal, Smith, Steiner & Wax
401 West A Street, Suite 320
San Diego, CA 92101
Facsimile: (619) 239-6048

Facsimile: (619) 239-6048

Andrew Jones, Executive Assistant City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4100

Facsimile: (619) 236-7215

FROM:

Cheryl Shelly
Legal Analyst
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Phone: 916 327-8382
Fax: (916) 327-6377

DATE:

February 10, 2012

TOTAL NO. OF PAGES INCLUDING COVER:

9

RE:

LA-CE-746-M

NOTES/COMMENTS:

Attached are the following documents:

- Letter from General Counsel dated 2/10/12 regarding IR No. 615
- Cover Letter, Complaint, and Notice of Informal Conference

The pages comprising this facsimile transmission contain information from the Public Employment Relations Board. This information is intended solely for use by the individual(s) or entity(ies) named as the recipient(s) hereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this transmission may be prohibited. If you have received this transmission in error, please immediately notify us by telephone.

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8381
Fax: (916) 327-6377



February 10, 2012

Via Facsimile and U.S. Mail

Fern M. Steiner, Attorney
Ann M. Smith, Attorney
Tosdal, Smith, Steiner & Wax
401 West A Street, Suite 320
San Diego, CA 92101

Facsimile: (619) 239-6048

Andrew Jones,
Executive Assistant City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4100

Facsimile: (619) 236-7215

Re: *San Diego Municipal Employees Association v. City of San Diego*
Injunctive Relief Request No. 615
Unfair Practice Charge No. LA-CE-746-M

Dear Parties:

By direction of the Board, the request for injunctive relief in the above-entitled matter is GRANTED. By further direction of the Board, the General Counsel shall: (1) immediately initiate an action for appropriate injunctive and writ relief in San Diego Superior Court; and (2) expedite administrative proceedings on Unfair Practice Charge No. LA-CE-746-M.

Sincerely,

M. Suzanne Murphy
General Counsel

MSM:css

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On February 10, 2012, I served the Letter regarding Case No. LA-CE-746-M on the parties listed below by

X placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

 personal delivery.

X facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Fern M. Steiner, Attorney
Ann M. Smith, Attorney
Tosdal, Smith, Steiner & Wax
401 West A Street, Suite 320
San Diego, CA 92101

Facsimile: (619) 239-6048

Andrew Jones,
Executive Assistant City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4100

Facsimile: (619) 236-7215

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 10, 2012, at Sacramento, California.

C. Shelly

(Type or print name)



(Signature)

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2805
Fax: (818) 551-2820



February 10, 2012

Fern M. Steiner, Attorney
Ann M. Smith, Attorney
Tosdal, Smith, Steiner & Wax
401 West A Street, Suite 320
San Diego, CA 92101

Andrew Jones, Executive Assistant City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4100

Re: *San Diego Municipal Employees Association v. City of San Diego*
Unfair Practice Charge No. LA-CE-746-M

Dear Parties:

The Office of the General Counsel has issued the enclosed COMPLAINT in the above-entitled matter. The Respondent is required to file an ANSWER within 20 calendar days from the date of service of the COMPLAINT, pursuant to PERB Regulation 32644.¹ The required contents of the ANSWER are described in PERB Regulation 32644(b). If you have not filed a Notice of Appearance form, one should be completed and returned with your ANSWER.

Also enclosed is a Notice of Informal Conference informing you that an informal settlement conference has been scheduled. If you are unable to meet on the date specified, please follow the instructions in the second paragraph of the notice. All inquiries, filings, and correspondence in this matter should be directed to me.

Sincerely,

Valerie Pike Racho

Valerie Pike Racho
Regional Attorney

Enclosures

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95811-4124, and the text is available at www.perb.ca.gov.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN DIEGO MUNICIPAL EMPLOYEES
ASSOCIATION,

Charging Party,

v.

CITY OF SAN DIEGO,

Respondent.

Case No. LA-CE-746-M

COMPLAINT

It having been charged by Charging Party that Respondent engaged in unfair practices in violation of California Government Code section 3500 et seq., the General Counsel of the Public Employment Relations Board (PERB), pursuant to California Government Code sections 3509(b) and 3541.3(i) and California Code of Regulations, title 8, section 32640, issues this COMPLAINT on behalf of PERB and ALLEGES:

1. Charging Party is an exclusive representative within the meaning of PERB Regulation 32016(b) of an appropriate unit of employees.
2. Respondent is a public agency within the meaning of Government Code section 3501(c) and PERB Regulation 32016(a).
3. From approximately April 2011 to date, Respondent, through its agents, including chief labor negotiator San Diego City Mayor Jerry Sanders, has co-authored, developed, sponsored, promoted, funded, and implemented a pension reform initiative, referred to as the "Comprehensive Pension Reform Initiative for San Diego" (CPR Initiative).
4. Commencing on or about August 16, 2011, Respondent, through its agent San Diego City Attorney Jan I. Goldsmith, has refused to meet and confer with Charging Party

regarding the provisions of the CPR Initiative that impact wages and retirement benefits for bargaining unit members.

On or about January 30, 2012, Respondent placed the CPR Initiative on the ballot

6. By the acts and conduct described in paragraphs 3, 4, and 5, Respondent failed and refused to meet and confer in good faith with Charging Party in violation of Government Code section 3503 and committed an unfair practice under Government Code section 3509(b) and

7. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3506 and is an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(a).

8. This conduct also denied Charging Party its right to represent bargaining unit employees in violation of Government Code section 3503 and is an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(b).

Any amendment to the complaint shall be processed pursuant to California Code of Regulations, title 8, sections 32647 and 32648.

DATED: February 10, 2012

M. SUZANNE MURPHY
General Counsel

By Wendi L. Ross
Wendi L. Ross
Deputy General Counsel

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN DIEGO MUNICIPAL EMPLOYEES
ASSOCIATION,

Charging Party,

v.

CITY OF SAN DIEGO,

Respondent.

Case No. LA-CE-746-M

**NOTICE OF INFORMAL
CONFERENCE**

PLEASE TAKE NOTICE that on February 23, 2012, beginning at 10:00 a.m., at the Public Employment Relations Board, 700 North Central Avenue, Suite 200, Glendale, California, an informal conference will be held pursuant to California Code of Regulations, title 8, section 32650 on an unfair practice complaint issued by the Public Employment Relations Board (PERB) against the above-named respondent. The conference will be held before the undersigned representative of PERB, at which time the parties should appear in person or by representative.

PLEASE TAKE FURTHER NOTICE that requests to change the date of the informal conference will not be entertained unless a written request meeting the following conditions is filed in the Los Angeles Regional Office not less than five (5) working days before the date set for the conference.

1. The request must be served on the opposing party;
2. The reasons for the request must be specified;
3. The request must include the opposing party's position on the request;
4. Alternate dates proposed by the requesting party and submitted by the opposing party must be stated. (Reasonable attempts should have been previously made to coordinate those dates with the calendar of the undersigned; and

5. The alternate dates must fall within 20 calendar days of the date the conference was originally scheduled.

If all of the above-listed conditions are not met, the written request must set forth good cause for the failure to comply with this directive.

At the conference, the parties should be prepared to reach a settlement agreement or reduce the number of outstanding issues. If no settlement is reached, a formal hearing will be scheduled by the PERB. Parties should be prepared at the conference to submit at least three sets of proposed dates for formal hearing.

All communications concerning the further processing of this case should be addressed to the undersigned at PERB, 700 N. Central Ave., Suite 200, Glendale, CA 91203-3219; (818) 551-2805.

DATED: February 10, 2012

By Valerie Pike Racho
Valerie Pike Racho
Regional Attorney

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On February 10, 2012, I served the Cover Letter, Complaint and Notice of Informal Conference regarding Case No. LA-CE-746-M on the parties listed below by

X placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

personal delivery.

X facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Fern M. Steiner, Attorney
Ann M. Smith, Attorney
Tosdal, Smith, Steiner & Wax
401 West A Street, Suite 320
San Diego, CA 92101

Andrew Jones, Executive Assistant City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4100

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 10, 2012, at Sacramento, California.

C. Shelly

(Type or print name)



(Signature)

EXHIBIT B

RECEIVED
CITY CLERK'S OFFICE
12 FEB 16 PM 2:53
SAN DIEGO, CALIF.

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2017 FEB 14 P 2:21

RECEIVED BY MAIL
DATE 02/16/12
DEPT NAME
RISK MANAGER
COPY TO: CITY ATTORNEY 02/16/12

1 M. SUZANNE MURPHY, Bar No. 145657
General Counsel
2 WENDI L. ROSS, Bar No. 141030
Deputy General Counsel
3 YARON PARTOVI, Bar No. 243558
Regional Attorney
4 JONATHAN LEVY, Bar No. 269693
Regional Attorney
5 PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
6 Sacramento, California 95811-4174
Telephone: (916) 322-3198
7 Facsimile: (916) 327-6377
8 Attorneys for State of California,
PUBLIC EMPLOYMENT RELATIONS BOARD
9

10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 PUBLIC EMPLOYMENT RELATIONS BOARD,
13 Plaintiff/Petitioner,
14 v.
15 CITY OF SAN DIEGO,
16 Defendant/Respondent.

Case No. 37-2012-00092205-CU-MC-CTL

COMPLAINT FOR
INJUNCTIVE RELIEF;
VERIFIED PETITION FOR
WRIT OF MANDATE

(Gov. Code, §§ 3509, subs. (a),
(b) & 3541.3, subd. (j); Cal. Code
Regs., tit. 8, § 32450 et seq.; Code
Civ. Proc., §§ 526, 527 & 1085)

18 SAN DIEGO MUNICIPAL EMPLOYEES
19 ASSOCIATION,

20 Real Party in Interest.

Ex Parte Hearing Date:
Date: February __, 2012
Time: __: __ a.m.
Dept.: _____

Exempt from Fees
(Gov. Code, § 6103)

Service on California Attorney
General Required (Cal. Rules of
Court, rule 8.29)

Complaint for Injunctive Relief;
Verified Petition for Writ of Mandate

1 TO THE HONORABLE COURT, CLERK OF COURT, AND ALL PARTIES:

2 Comes now Plaintiff and Petitioner, the CALIFORNIA PUBLIC EMPLOYMENT
3 RELATIONS BOARD (PERB or Board), and alleges as follows:

4 1. PERB seeks such relief as the Court may grant to restrain Defendant and Respondent
5 City of San Diego (City) from proceeding with or taking any further action to permit an election on a
6 local ballot measure entitled the "Proposition—Charter Amendment/Comprehensive Pension
7 Reform for San Diego"¹ (Initiative), which it acted on January 30, 2012 to place on the ballot for the
8 June 5, 2012 election, without first satisfying its obligations to meet and confer in good faith with
9 Real Party in Interest San Diego Municipal Employees Association (MEA), as required by the
10 Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq. [MMBA]).² (§§ 3505 & 3509, subds. (a), (b);
11 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591 [*City of*
12 *Seal Beach*].)

13 **The Parties**

14 2. At all times relevant, PERB has been a quasi-judicial administrative agency created
15 by section 3541 for the purpose, *inter alia*, of promoting the development of harmonious and
16 cooperative labor relations between California's public sector employers and their employees,
17 including California's local government employers and their employees. (§ 3500 et seq.)

18 3. PERB has the authority pursuant to sections 3509, subdivision (a), and 3541.3,
19 subdivision (j), to petition the superior court for injunctive relief upon issuance of an administrative
20 complaint charging that an employer or an employee organization has engaged or is engaging in an
21 unfair labor practice. (See also Cal. Code Regs., tit. 8, § 32450 et seq.)

22 4. As a public agency, PERB is not required to file a bond or undertaking when
23 requesting injunctive relief. (Code Civ. Proc., § 529, subd. (b)(3).)

24 5. As a public agency, PERB is not required to pay a filing fee. (§ 6103.)

25
26 ¹ The proposed charter amendment is also referred to as the "Comprehensive Pension
27 Reform Initiative for San Diego."

28 ² All further statutory references are to the Government Code unless otherwise stated.

1 Restraining Order (TRO) and Order to Show Cause (OSC) re Preliminary Injunction [Ross Decl.],
2 ¶ 8, Exh. C.)

3 11. The Initiative was co-authored, developed, sponsored, promoted, funded, and
4 implemented by City Mayor Jerry Sanders, acting in his official capacity and as an agent of the City.
5 (Ross Decl., ¶ 2, Exh. A; ¶ 5, Exh. B.)

6 12. City Councilmembers Kevin Faulconer and Carl DeMaio assisted with the creation,
7 development, promotion, funding, and implementation of the Initiative, acting in their official
8 capacity and as agents of the City. (Ross Decl., ¶ 2, Exh. A; ¶ 5, Exh. B.)

9 13. The Initiative, if passed, will directly impact the wages and retirement benefits of
10 current and future bargaining unit members, *inter alia*, by: (a) changing retirement benefits from a
11 defined benefit plan to a defined contribution plan for all new employees, except for police officers;
12 (b) changing the definition of the term "pensionable" compensation for all current and new
13 employees; (c) freezing current employees' salaries for five years; (d) eliminating pensions for
14 individuals convicted of certain felonies; and (e) setting a predetermined limitation on any initial
15 bargaining proposals presented by the MEA. (Ross Decl., ¶ 5, Exh. B.)

16 14. Beginning in July 2011, the MEA repeatedly requested that the City meet and confer
17 over the provisions of the Initiative in accordance with the MMBA and the California Supreme
18 Court's decision in *City of Seal Beach, supra*, 36 Cal.3d 591. (Ross Decl., ¶ 2, Exh. A.)

19 15. In or about August 2011, and continuing to the present date, City Attorney, Jan I.
20 Goldsmith, and members of his staff, repeatedly refused to negotiate the provisions of the Initiative
21 with the MEA. (Ross Decl., ¶ 2, Exh. A; ¶ 5, Exh. B.)

22 16. On January 30, 2012, the City Council placed the Initiative on the ballot for the June
23 5, 2012 election. (Ross Decl., ¶ 11, Exh. F.)

24 17. The last day to withdraw the Initiative from the ballot for the June 5, 2012 election is
25 March 9, 2012. (Ross Decl., ¶ 13, Exh. H.)

26 18. The last day to submit ballot arguments in favor of or opposition to the Initiative is
27 March 22, 2012. (Ross Decl., ¶ 13, Exh. H.)

28 19. The City has repeatedly asserted that it had no obligation to meet and confer with the

1 MBA regarding the provisions of the Initiative before it was placed on the June 5, 2012 ballot.
2 Rather, the City asserts that it is a so-called "citizens' initiative" brought by three private citizens—
3 Catherine (April) Boling, T. J. Zane, and Stephen B. Williams—and that the City, therefore, had no
4 obligation to negotiate the provisions of the Initiative prior to placing the Initiative on the ballot for
5 the June 5, 2012 election. (Ross Decl., ¶ 2, Exh. A; ¶ 5, Exh. B; ¶ 14, Exh. K.) PERB is informed
6 and believes, however, that Ms. Boling, Mr. Zane, and Mr. Williams are agents of the City, or
7 persons acting in concert with agents of the City in the development, sponsorship, promotion,
8 funding, and implementation of the Initiative, and in its refusal to negotiate with the MEA about the
9 Initiative. (*Ibid.*)

10 Procedural Background

11 20. On or about January 31, 2012, the MEA filed an unfair practice charge (UPC), No.
12 LA-CE-746-M, and also requested that PERB petition the superior court for an injunction pursuant
13 to sections 3541.3, 3509, subdivision (a), and California Code of Regulations, title 8, section 32450
14 et seq., requiring the City to remove the Initiative from the ballot for the June 5, 2012 election.
15 (Ross Decl., ¶¶ 2-3, Exh. A; ¶ 5, Exh. B.)

16 21. On February 10, 2012, PERB's General Counsel issued a complaint against the City,
17 alleging that it violated Government Code section 3505 and 3509, subdivision (b), and California
18 Code of Regulations section 32603(c), based upon evidence that the City, acting through its agents and
19 representatives, refused to meet and confer in good faith with MEA regarding the provisions of the
20 Initiative that impact wages and retirement benefits for current and future bargaining unit members
21 before placing the Initiative on the ballot for the June 5, 2012 election. (Ross Decl., ¶ 4, Exh. I [the
22 Administrative Complaint].)

23 22. In support of its request for injunctive relief, the MEA provided PERB with the sworn
24 declaration of Michael Zucchet, General Manager of the MEA. Mr. Zucchet's declaration contains
25 numerous exhibits. (Ross Decl., ¶ 5, Exh. B.)

26 23. The MEA's request for injunctive relief was granted by the Board on February 10,
27 2012, and is filed herein by direction of the Board. (Ross Decl., ¶ 6, Exh. J.)

28 Venue and Jurisdiction

1 or the MEA, other than the relief sought in this Petition. By direction of the Board, administrative
2 proceedings have been and are being expedited. An Administrative Complaint has issued, and an
3 Informal Settlement Conference has been scheduled for February 23, 2012. If settlement efforts are
4 not successful, PERB will set a formal hearing before an administrative law judge (ALJ) on the
5 Administrative Complaint shortly thereafter. However, any proposed decision of the ALJ will be
6 subject to an appeal to the Board itself, followed by possible judicial review by the Court of Appeal
7 and the California Supreme Court—a process that, in the best of circumstances, can take a year or
8 more to complete; thus, no final, enforceable order of the Board can issue before the June 5, 2012
9 election. In these circumstances, the Board will not be able to meaningfully aid those new
10 employees who in the meantime have been excluded from the City's existing Defined Benefit Plan
11 and forced into a Defined Contribution Plan, or those current employees who in the meantime have
12 been forced to pay higher employee contributions to the Defined Benefit Plan, or those who have
13 retired with diminished benefits, or those City employees whose wages have been frozen as a result
14 of the Initiative.

15 35. If the relief sought herein is not granted, the MEA and the City employees it
16 represents will suffer grave and irreparable harm. If the City is allowed to proceed with its plan to
17 present the Initiative to the electorate without having first met and conferred with the MEA and other
18 affected employee organizations, the policy, spirit, and bargaining mandates established by the
19 Legislature and codified in the MMBA will be circumvented and thwarted. The City's unlawful
20 attempt to avoid its obligations under the MMBA is also likely to be replicated elsewhere and, will
21 cause irreparable harm to collective bargaining rights provided by California's public sector labor
22 laws to employees of local governmental agencies statewide.

23 **Notice to the City Regarding the Ex Parte Hearing**

24 36. Before filing this Complaint for Injunctive Relief and Verified Petition for Writ of
25 Mandate, PERB notified counsel for the City, Executive Assistant City Attorney Andrew Jones and
26 Deputy City Attorney Joan Dawson, by voicemail on February 13, 2012, that PERB intended to file
27 an ex parte application for a TRO and OSC regarding a preliminary injunction from this Court on
28 February 16, 2012. PERB additionally transmitted this information to Mr. Jones via facsimile on

1 February 13, 2012. (Ross Decl., ¶ 15, Exh. L.) PERB also transmitted a copy of this Complaint for
2 Injunctive Relief and Verified Petition for Writ of Mandate to Mr. Jones on February 13, 2012 via
3 facsimile. PERB will transmit to Mr. Jones its Ex Parte Application for a TRO and OSC re
4 Preliminary Injunction, its Memorandum of Points and Authorities, a Proposed Order, and the
5 Declaration of Wendi I. Ross, via electronic mail on February 14, 2012. (Ross Decl., ¶ 16.)

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff and Petitioner California Public Employment Relations Board prays
8 for judgment as follows:

9 1. That a Temporary Restraining Order be granted, enjoining and restraining the City of
10 San Diego, its agents, employees, representatives, officers, and officials, and any other person
11 acting in concert or participation with any of them, and ordering them and each of them to:

12 (a) immediately, and in all events prior to March 9, 2012, take all necessary steps to remove
13 the "Proposition—Charter Amendment/Comprehensive Pension Reform for San Diego"

14 (referred to herein as the Initiative) from the June 5, 2012 ballot; and

15 (b) cease and desist from taking or attempting to take any further action, directly or
16 indirectly, by any means, method or device whatsoever, to cause or permit the Initiative to be
17 placed before the voters on June 5, 2012, until the date of a hearing upon an Order to Show
18 Cause re Preliminary Injunction.

19 2. That upon the hearing of said Order to Show Cause, a Preliminary Injunction be
20 granted herein restraining the City of San Diego and its agents, employees, representatives, officers
21 and officials, and any other person acting in concert or participation with any of them, from doing or
22 causing or permitting to be done any of the acts or things prayed in paragraph 1 of this prayer to be
23 enjoined or incurred.

24 3. That a permanent injunction pursuant to Code of Civil Procedure sections 526 and
25 527, and a peremptory writ of mandate pursuant to Code of Civil Procedure section 1085, be issued
26 and directed to the City of San Diego, its agents, employees, representatives, officers, and officials,
27 and any other person acting in concert or participation with any of them, ordering them and each of
28 them to comply with their clear and present ministerial duties to meet and confer in good faith with

1 the San Diego Municipal Employees Association, pursuant to section 3505 of the MMBA, regarding
2 provisions of the Initiative or any future initiative with proposed provisions that may affect current
3 and future bargaining unit members' wages and retirement benefits, before placing any such
4 initiative on the ballot for any subsequent election.

5 4. For its cost of suit herein incurred.

6 5. For such other and further relief as the Court may deems proper.

7 Dated: February 13, 2012

8 Respectfully submitted,

9 M. SUZANNE MURPHY, General Counsel

10
11 By Wendi L. Ross
12 WENDI L. ROSS
13 Deputy General Counsel

14 Attorneys for Plaintiff and Petitioner
15 PUBLIC EMPLOYMENT RELATIONS BOARD
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VERIFICATION

I, Michael Zucchet, am the General Manager of Real Party in Interest San Diego Municipal Employees Association (MEA), and a resident and taxpayer of the City of San Diego. In support of a request for injunctive relief filed by the MEA on January 31, 2012, I prepared, executed, and submitted through counsel a Declaration of Michael Zucchet in Support of Request for Injunctive Relief, containing numerous exhibits.

I have read the foregoing Complaint for Injunctive Relief and Verified Petition for Writ of Mandate, and know the contents thereof. I certify that all factual matter alleged in the Complaint and Petition are true of my own knowledge, except as to those matters alleged therein upon information or belief, or that are uniquely within the knowledge of the Respondents, and as to those matters, I have made a good faith effort to verify all matters and believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of February, 2012, in San Diego, California.



Michael Zucchet

EXHIBIT C

1 M. SUZANNE MURPHY, Bar No. 145657
General Counsel
2 WENDI L. ROSS, Bar No. 141030
Deputy General Counsel
3 YARON PARTOVI, Bar No. 243558
Regional Attorney
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Regional Attorney
5 PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
6 Sacramento, California 95811-4174
Telephone: (916) 322-3198
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COPY TO: CITY ATTORNEY 02/15/12
RISK MANAGEMENT
DATE 02/15/12
DCC NAME ku
RECEIVED BY: MAIL _____
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ID _____
EPT. NAME _____

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By: L. SAN NICOLAS, Deputy

8 Attorneys for State of California, Public Employment Relations Board

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10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 PUBLIC EMPLOYMENT RELATIONS
BOARD,
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14 Plaintiff/Petitioner,
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16 v.
17 CITY OF SAN DIEGO,
18
19 Defendant/Respondent.
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22 SAN DIEGO MUNICIPAL EMPLOYEES
ASSOCIATION,
23
24 Real Party in Interest.

Case No. 37-2012-00092205-CU-MC-CTL

DECLARATION OF NOTICE RE EX
PARTE APPLICATION AND
HEARING

IMAGED FILE

Ex Parte Hearing Date:
Date: February 21, 2012
Time: 8:30 a.m.
Dept.: C-67
Judge: Hon. William S. Dato

Exempt from Fees
(Gov. Code, § 6103)

25 I, WENDI L. ROSS, hereby declare:

26 1. I am employed as Deputy General Counsel by and for the Public Employment Relations
27 Board (PERB or Board). My job duties include investigating unfair practice charges and requests for
28 injunctive relief filed with PERB. I was assigned to the instant matter by PERB's General Counsel.

1 M. SUZANNE MURPHY, Bar No. 145657
General Counsel
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8 Attorneys for State of California,
PUBLIC EMPLOYMENT RELATIONS BOARD
9

10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 COUNTY OF SAN DIEGO

12 PUBLIC EMPLOYMENT RELATIONS
13 BOARD,

14 Plaintiff/Petitioner,

15 v.

16 CITY OF SAN DIEGO,

17 Defendant/Respondent.
18

19 SAN DIEGO MUNICIPAL EMPLOYEES
20 ASSOCIATION,

21 Real Party in Interest.
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Case No. 37-2012-00092205-CU-MC-CTL

**EX PARTE APPLICATION FOR A
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE
REGARDING A PRELIMINARY
INJUNCTION**

IMAGED FILE

(Gov. Code, §§ 3509, subs. (a), (b) &
3541.3, subd. (j); Cal. Code Regs., tit. 8,
§ 32450 et seq.; Code Civ. Proc., §§ 526, 527
& 1085)

Ex Parte Hearing Date:

Date: February 21, 2012

Time: 8:30 a.m.

Dept.: C-67

Judge: Hon. William S. Dato

Exempt from Fees

(Gov. Code, § 6103)

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By: L. SAN NICOLAS, Deputy

1 1. Plaintiff and Petitioner Public Employment Relations Board (PERB) hereby applies.
2 ex parte to this Court for a Temporary Restraining Order (TRO) and Order to Show Cause (OSC) re:
3 Preliminary Injunction, enjoining and restraining Defendant and Respondent City of San Diego
4 (City), its agents, employees, representatives, officers, and officials, and any other person acting in
5 concert or participation with any of them, and ordering them and each of them, pending further order
6 from this Court, to:

7 (a) immediately, and in all events prior to March 9, 2012, take all necessary steps to remove
8 the "Proposition—Charter Amendment/Comprehensive Pension Reform for San Diego"
9 (referred to herein as the Initiative) from the June 5, 2012 ballot; and

10 (b) cease and desist from taking or attempting to take any further action, directly or
11 indirectly, by any means, method or device whatsoever, to cause or permit the Initiative to be
12 placed before the voters on June 5, 2012, until the date of a hearing upon an OSC re
13 Preliminary Injunction.

14 2. By this Ex Parte Application, PERB seeks to preserve the status quo that preceded the
15 City's alleged violation of its duty to meet and confer with the MEA about wages and retirement
16 benefits before placing the Initiative on the ballot for the June 5, 2012 election, pending a hearing or
17 trial on a preliminary injunction.

18 3. As the accompanying Declaration of Wendi L. Ross and Memorandum of Points and
19 Authorities demonstrate, if the City is not enjoined as described in Paragraph 1 above, great and
20 irreparable injury will result to Real Party in Interest San Diego Municipal Employees Association
21 (MEA), current and future employees of the City for whom MEA serves as the recognized exclusive
22 representative under the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.) in the Professional,
23 Supervisory, Technical, and Administrative Support and Field Service Units (City Employees or
24 bargaining unit members), and the public in the City of San Diego and the State of California, before
25 the matter can be heard on notice.

26 4. This application is made pursuant to Code of Civil Procedure sections 526 and 527 on
27 the grounds that the MEA, current and future City Employees, and the public in the City and the
28 State of California, will suffer great or irreparable injury if injunctive relief is not obtained prior to a

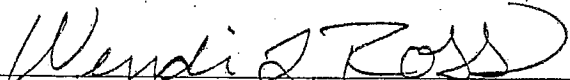
1 hearing or trial on a preliminary injunction.

2 This application is based on the accompanying Complaint for Injunctive Relief and Verified
3 Petition for Writ of Mandate, the Declaration of Wendi L. Ross, the Memorandum of Points and
4 Authorities, a [Proposed] Order, and all pleadings, papers, and evidence as will be submitted in
5 connection with the application and hearing on the OSC re preliminary injunction.

6 Dated: February 14, 2012

7 Respectfully submitted,

8 M. SUZANNE MURPHY, General Counsel

9
10 By 
11 WENDI L. ROSS, Deputy General Counsel
12 Attorneys for Plaintiff
13 PUBLIC EMPLOYMENT RELATIONS BOARD
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1 M. SUZANNE MURPHY, Bar No. 145657
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17 CITY OF SAN DIEGO,
Defendant/Respondent.

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19 SAN DIEGO MUNICIPAL EMPLOYEES
ASSOCIATION,
20
21 Real Party in Interest.

Case No. 37-2012-00092205-CU-MC-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PERB'S EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE REGARDING A
PRELIMINARY INJUNCTION**

IMAGED FILE

Ex Parte Hearing Date:
Date: February 21, 2012
Time: 8:30 a.m.
Dept.: C-67
Judge: Hon. William S. Dato

**Exempt from Fees
(Gov. Code, § 6103)**

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1 INTRODUCTION

2 Almost thirty years ago, the California Supreme Court ruled that local governments must
3 satisfy the “meet and confer” requirements of the Meyers-Milias-Brown Act (MMBA or Act)¹
4 before proposing to the electorate a charter amendment that would impact a subject within the scope
5 of representation. (§ 3505; *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach*
6 (1984) 36 Cal.3d 591 [*Seal Beach*].) Plaintiff and Petitioner Public Employment Relations Board
7 (PERB or Board), has similarly affirmed that this bargaining obligation must be satisfied *before* an
8 employer can ask voters to decide a matter that impacts employees’ wages, hours, or terms and
9 conditions of employment. (*County of Santa Clara* (2010) PERB Decision No. 2120-M; *County of*
10 *Santa Clara* (2010) PERB Decision No. 2114-M.)

11 This case involves a ballot initiative, entitled the “Proposition—Charter Amendment/
12 Comprehensive Pension Reform for San Diego”² (Initiative) that would, if passed by the voters on
13 June 5, 2012, serve to amend the City Charter for Defendant and Respondent City of San Diego
14 (City). There is no dispute that the provisions of the Initiative would have a direct and adverse
15 impact on the wages and retirement benefits of current and future City employees represented by
16 Real Party in Interest San Diego Municipal Employees Association (MEA).

17 Instead of negotiating in good faith with the MEA over the various provisions of the
18 Initiative that would affect the City employees’ wages and retirement benefits, the City has chosen
19 instead to try to skirt the law. The City claims that it is not responsible for the Initiative, but rather it
20 is the product of “private citizens,” and is therefore a “citizen’s initiative.” As the facts in this case
21 clearly demonstrate, however, the Initiative was not written and sponsored by private citizens, but
22 rather is directly attributable to the City based on the conduct and actions of City Mayor Jerry
23 Sanders and other agents of the City. Since the City has a “Strong Mayor” form of governance,
24 Mayor Sanders is also the Chief Labor Negotiator for the City, and has an obligation to meet and
25

26 ¹ The MMBA is codified at Government Code section 3500 et seq. All future references are
27 to the Government Code, unless otherwise specified.

28 ² The proposed charter amendment is also sometimes referred to as the “Comprehensive
Pension Reform Initiative for San Diego” or the “CPR Initiative.”

1 confer in good faith under the MMBA. The City's conduct in this case is a brazen attempt to
2 sidestep the meet-and-confer requirements of the MMBA.

3 As *Public Employment Relations Bd. v. Modesto City School Dist.* (1982) 136 Cal.App.3d
4 881(*Modesto*) has long made clear, PERB may obtain injunctive relief if: (1) it has reasonable cause
5 to believe that an unfair practice has been committed; and (2) injunctive relief is "just and proper."
6 (*Id.* at p. 891.) There is ample evidence in this case to satisfy both prongs of the *Modesto* standard.
7 This Court should immediately enjoin the Initiative from appearing on the June 5, 2012 ballot and,
8 ultimately, until the City satisfies its meet and confer obligations under the MMBA. For all of these
9 reasons, injunctive relief is mandated.

10 FACTUAL AND PROCEDURAL BACKGROUND

11 MEA is the recognized employee organization for approximately 3,800 City employees in
12 four bargaining units: (1) Professional, (2) Supervisory, (3) Technical, and (4) Administrative
13 Support and Field Service. (Declaration of Wendi L. Ross, Exh. B, 0106.)³ MEA's Memorandum
14 of Understanding with the City expired on June 30, 2011. Article IX of the City Charter, entitled
15 "The Retirement of Employees," specifies employee pension benefits and contributions. (Exh. C.)

16 Proposed Ballot Initiative

17 On April 4, 2011, three City residents—Catherine A. Boling (Boling), T. J. Zane (Zane),
18 and Stephen B. Williams (Williams)⁴—notified the City Clerk of their intention to circulate a
19 petition for a ballot measure, entitled "Comprehensive Pension Reform Initiative for San Diego"
20 (in all material respects identical to the Initiative), for the purpose of amending the City Charter.
21 (Exh. B, 0002, 0107.) The three City residents also requested that the City Attorney prepare a

22
23 ³ All further citations to Exhibits are to this declaration, including the four-digit Bates
24 number in the bottom right corner of the document to specify a particular page of the Exhibit.

25 ⁴ Boling, a CPA, has served as campaign treasurer for more than 50 local ballot measures
26 and candidates, including Councilmember Faulconer and City Attorney Jan Goldsmith.
27 ([http://www.sandiegomagazine.com/media/San-Diego-Magazine/April-2008/The-Troubleshooter-
the-Accountant](http://www.sandiegomagazine.com/media/San-Diego-Magazine/April-2008/The-Troubleshooter-the-Accountant) (February 9, 2012).) Zane is a professional political consultant who has been
28 involved in numerous campaigns involving local ballot measures and City Council elections.
(<http://www.sdlincolnclub.org/about?q=tj-zane-president-ceo> (February 9, 2012).) Williams is a real
estate professional. (<http://www.sentre.com/bios/sbwilliams> (February 9, 2012).) (Exh. K.)

1 "Title and Summary" for the Initiative pursuant to Election Code sections 9255, 9256, 9202, and
2 9203. (Exh. A, 0051.)

3 If approved, the Initiative would make changes to multiple provisions of the current City
4 Charter regarding City employee pensions by, *inter alia*: redefining the term "Base
5 Compensation" for the calculation of pension benefits to exclude all forms of compensation, other
6 than wages (Exh. B, 0008); discontinuing the current "Defined Benefit Pension Plan" for all new
7 hires, other than newly hired sworn police officers, and replace it with a "Defined Contribution
8 Plan" (Exh. B, 0011); increasing pension contributions to the Defined Benefit Pension Plan for
9 current City employees (Exh. B, 0012); "eliminat[ing], to the extent permitted by law, the Defined
10 Pension Benefit Plan for any individual City ... employee who is convicted of a felony related to
11 their employment, duties, or obligations as a City ... employee" (*ibid.*); limiting employer
12 contributions to the Defined Benefit Pension Plan to 9.2% of the compensation of each
13 participating City employee who is not a Uniformed Public Safety Officer (Exh. B, 0013);
14 authorizing the City to provide disability benefits only to participants in the Defined Plan "who
15 ha[ve] become physically or mentally disabled by reason of bodily injury or illness cause by
16 actions related to the discharge of their duties" (Exh. B, 0014); and eliminating the requirement of
17 a majority vote of employees and/or retirees prior to the adoption of any ordinance amending the
18 retirement system "which affects the benefits of any employee under such retirement system" or
19 "increases" these benefits (*ibid.*).

20 On December 5, 2011, the City Council adopted a resolution (San Diego Resolution R-
21 307155), declaring its intent to submit the Initiative to the voters. (Exh. E.) On January 30, 2012,
22 the City Council introduced and adopted San Diego Ordinance O-20127, calling for a June 5, 2012
23 Municipal Special Election to submit the Initiative to qualified City voters. (Exh. F.) The City
24 Council also adopted Resolution R-307249, directing the City Attorney to prepare an impartial
25 analysis and retain outside counsel to assist in its preparation, and directed the Mayor, Independent
26 Budget Analyst, and City Auditor to prepare a fiscal impact analysis, related to the Initiative.
27 (Exh. G.) On February 13, 2012, the City Council was scheduled to formally adopt Ordinance
28

1 O-20127, which was prepared by the City Attorney.⁵ (Exh. H.)

2 The City Mayor's Authority in Labor Relations

3 In a January 26, 2009 memorandum to the Mayor and City Councilmembers, City Attorney
4 Jan I. Goldsmith (Goldsmith) explained the Mayor's authority, pursuant to the City's "Strong
5 Mayor" form of governance, under the City Charter:

6 Article XV of the Charter was added by voters on November 2, 2004 and became
7 effective January 1, 2006. The stated purpose of the Article is "to modify the existing
8 form of governance for a trial period of time to test implementation of a new form of
9 governance commonly known as a Strong Mayor for of government." Charter, §250.

10 Under the strong mayor form of governance, the Mayor assumes all of the authority,
11 power, and responsibilities formally conferred upon the City Manager, as described in
12 Articles V, VII, and IX of the Charter. Charter, §§260(b), 265(b). The Mayor has
13 additional authority and responsibilities, including *servicing as the chief executive*
14 *officer of the City (Charter, § 265)*; executing and enforcing all laws, ordinances, and
15 policies of the City, including the right to promulgate and issue administrative
16 regulations that give controlling direction to the administrative service of the City
17 (Charter, §265(b)(2)); *recommending to the Council such measures and ordinances*
18 *as he or she may deem necessary or expedient (Charter, §265(b)(3))*; and making
19 such other recommendations to the Council concerning the affairs of the City as the
20 Mayor finds desirable (Charter, §265(b)(3)). *Under this authority, the Mayor*
21 *assumes the responsibility of labor negotiations, which is an administrative*
22 *function of local government.*

23 (Exh. A, 0192, emphasis added.)

24 City Agents' Involvement in the Drafting, Circulating, and Financing the Initiative

25 Although the Initiative was submitted by Boling, Zane, and Williams, there is no genuine
26 dispute that it was authored and sponsored by Mayor Sanders in conjunction with Councilmembers
27 Faulconer and DeMaio. (Exh. B.) Moreover, Mayor Sanders used the private citizens' initiative
28 process for the *express* purpose of avoiding the City's meet-and-confer obligation, and the
privileges and prestige of his office to do so. (*Ibid.*) The following are just a few examples
indicative of Mayor Sanders' and other City agents' role in the formulation of the Initiative:

27 ⁵ The future deadlines with respect to the initiative process are as follows: March 9, 2012 is
28 the last day for City Clerk to file with Registrar of Voters all election materials; and March 22, 2012
is the last day to file ballot arguments with City Clerk. (Exh. H.)

- 1 • On November 19, 2010, the Mayor's Communications Director, Darren Pudgil, issued a
2 "Mayor Jerry Sanders Fact Sheet" (Fact Sheet), which was posted on Mayor Sanders'
3 official website, stating in pertinent part that: "The Mayor ... announced he will place an
4 initiative on the ballot that would eliminate defined benefit pensions for new hires, instead
5 offering them a 401(K)-style, defined contribution plan similar to those in the private
6 sector." (Exh. A, 0134.) The Fact Sheet further stated that: "Sanders and Councilmember
7 ... Faulconer will craft the ballot initiative language and lead the signature-gathering effort
8 to place the initiative on the ballot." (*Ibid.*)
- 9 • On January 7, 2011, Pudgil sent an e-mail message to Fox News, stating that: "The City of
10 San Diego is a national leader in pension reform. We're eliminating employee pensions as
11 we know them and putting in place a 401-K plan like the private sector." (Exh. B, 0101.)
12 He added: "My boss, San Diego Mayor Jerry Sanders, is available any time to come on
13 [the Fox News program, "The O'Reilly Factor"] to talk about what he's doing in San Diego
14 and the greater national problem of bloated pensions and the billions of dollars they are
15 costing taxpayers and forcing cities to reduce services like police and fire to pay for these
16 pensions." (*Ibid.*)
- 17 • On January 10, 2011, Goldsmith issued Opinion Number 2011-1, prepared for Mayor
18 Sanders and the City Council, in which he stated that the City could "freeze 'Base
19 Compensation' ... as a means to reduce the City's long-term retirement liability," but that
20 such a change was "subject to the [MMBA]," and that the City could offer performance-
21 based increases to compensation that would not be included in retirement calculations."
22 (Exh. A, 0063.)⁶
- 23 • On January 12, 2011, Mayor Sanders stated during his official "State of the City" address
24 that "Councilman Kevin Faulconer, the city attorney and I will soon bring to voters an
25 initiative to enact a 401(k)-style plan that is similar to the private sector's and reflects the
26 reality of our times." (Exh. B.)
- 27 • In April 2011, Mayor Sanders participated in a press conference with Goldsmith, and
28 Initiative signatories Boling and Zane, on the City concourse outside of City Hall, under a
29 banner reading "Pension Reform Now!" (Exh. A, 0061; Exh. B, 0073.)
- 30 • In January 2011, Mayor Sanders and Councilmember Faulconer formed a fund-raising
31 committee, "San Diegans for Pension Reform (SDPR)," that contributed a total of

32 ⁶ In a June 19, 2008 memorandum to Mayor Sanders and the City Council, former City
33 Attorney Michael J. Aguirre provided a legal opinion that the Mayor may propose a ballot measure
34 to amend City Charter provisions related to retirement pensions, *provided that the City first complies*
35 *with its meet and confer obligations under the MMBA.* (Exh. A, 0087, emphasis added.) Aguirre
36 also advised that the Mayor may sponsor a voter petition drive as a citizen, however "*such*
37 *sponsorship would legally be considered as acting with apparent governmental authority* because of
38 his position as Mayor, and his right and responsibility under the Strong Mayor Charter provisions to
39 represent the City regarding labor issues and negotiations." (*Ibid.*) Given this apparent authority,
40 Aguirre added, "the City would have the same meet and confer obligations ..." (*Ibid.*)

1 approximately \$89,000 to the Initiative between April 1 and June 30, 2011. (Exh. B, 0022,
2 0038.)

- 3 • The Initiative was the result of a “compromise” between “[p]roponents of dueling ballot
4 measures to curtail San Diego city pensions” to “combine forces behind a single initiative
5 for the June 2012 ballot.” (Exh. B, 0027.)
- 6 • Pudgil “explained in an email” that “though the mayor—along with Council members
7 Kevin Faulconer and DeMaio—authored the ballot measure, Sanders is bringing it forward
8 ‘as a private citizen—not as mayor.’” (Exh. B, 0017.) It then again quotes Pudgil, saying:
9 “‘The mayor took this route because the public deserves the right to decide a measure of
10 this magnitude and importance.’” (*Ibid.*)
- 11 • Mayor Sanders candidly “explained ... that pension-reform proponents chose to go the
12 citizen-initiative route *in order to avoid negotiations with the unions* that represent city
13 employees.” (Exh. B, 0019, emphasis added.) Mayor Sanders thusly stated, “You do that
14 so you get the ballot initiative on that you actually want,” he said. “Otherwise, we’d have
15 gone through meet-and-confer [negotiations], and you don’t know what’s gonna go on at
16 that point through the meet-and-confer process.” (Exh. B, 0020.)

13 The MEA’s Requests to Bargain, the City’s Refusals, and the Subsequent UPC/IR Request

14 On July 15, 2011, the MEA sent Mayor Sanders a “Demand to Meet and Confer re
15 ‘Pension Reform’ Ballot Initiative” (Exh. B, 0003), but Mayor Sanders did not respond. In an
16 August 10, 2011 letter entitled, “Second Demand to Meet and Confer re ‘Pension Reform’ Ballot
17 Initiative,” the MEA reasserted its request. (Exh. B, 0057.) By letter dated August 16, 2011,
18 Goldsmith rejected the MEA’s bargaining demand, stating that “[i]t is the City’s position ... that
19 the City’s duty to meet and confer has not been triggered in relation to the ... Initiative.” (Exh. B,
20 0003, 0059.)

21 In a September 9, 2011 letter, the MEA renewed its bargaining demand. (Exh. B, 0061.)
22 By letter dated September 12, 2011, Goldsmith reiterated his rejection of said demand and
23 expressed his “understand[ing]” that the “initiative was written by a team of lawyers that included
24 former City Attorney John Witt.” (*Ibid.*) The parties exchanged additional letters on September
25 16, 2011, September 19, 2011, and October 5, 2011 (*id.*, 0071, 0079, 0084), but the City never
26 agreed to negotiate with the MEA about the Initiative before placing it on the ballot for the June 5,
27 2012 election.

28 On January 31, 2012, the MEA filed with PERB its UPC No. LA-CE-746-M, alleging that

1 the City refused to meet and confer in good faith with the MEA before placing the Initiative on the
2 ballot for the June 5, 2012 election. (Exh. A, 0001-0011.) The MEA also requested that PERB
3 petition the superior court for an injunction pursuant to sections 3509, subdivision (a), 3541.3 and
4 other applicable sections of the MMBA, and PERB Regulations section 32450 (Cal. Code Regs., tit.
5 8, § 32450). On February 10, 2012, the Board granted the request. (Exh. J.)

6 ARGUMENT

7 I. PERB HAS EXCLUSIVE INITIAL JURISDICTION TO SEEK 8 INJUNCTIVE RELIEF TO HALT UNFAIR LABOR PRACTICES.

9 The MMBA is administered by PERB, an expert quasi-judicial agency. PERB has broad
10 authority—analogueous to that of the National Labor Relations Board (NLRB)—to interpret the
11 MMBA in the interest of bringing “expertise and uniformity to the delicate task of stabilizing labor
12 relations” in California. (*San Diego Teachers Assn. v. Superior Court* (1979) 24 Cal.3d 1, 2 (*San*
13 *Diego*); *City and County of San Francisco v. Int’l Union of Operating Engineers Local 139* (2007)
14 151 Cal.App.4th 938, 943-944.) PERB’s interpretations of the MMBA are made pursuant to the
15 Board’s responsibility to evaluate unfair practice charges. (§ 3509, subd. (a).) The MMBA provides
16 a comprehensive administrative procedure for investigating, hearing, and deciding charges of unfair
17 practices against public agency employers. (§ 3509 et seq.)

18 Sections 3509, subdivision (a), and 3541.3, subdivision (j), authorize PERB to seek
19 injunctive relief, when “appropriate,” as an interim remedy against unfair practices proscribed by the
20 MMBA. Indeed, PERB has exclusive original jurisdiction to seek injunctive relief against alleged
21 unfair practices. (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597,
22 604; *San Diego, supra*, 24 Cal.3d 1; *Modesto, supra*, 136 Cal.App.3d at p. 891; *Fresno Unified*
23 *School District v. National Education Association* (1981) 125 Cal.App.3d 259, 270-271.)

24 II. THE COURT MUST APPLY A TWO-PRONGED TEST IN 25 EVALUATING PERB’S REQUESTS FOR INJUNCTIVE RELIEF.

26 Recognizing that after-the-fact remedies are not always adequate, the Legislature authorized
27 PERB to seek injunctive relief, prior to an administrative hearing, to halt alleged unfair practices.
28 (§§ 3509, subd. (a) & 3541.3, subd. (j).) Following applicable federal precedent, the California
Courts of Appeal have applied a two-prong test in determining the appropriateness of PERB requests

1 for injunctive relief. “Before injunctive relief may be granted, the trial court must determine [1] that
2 there exists *reasonable cause* to believe an unfair labor practice has been committed, and [2] that the
3 relief sought is *just and proper*.” (*Modesto, supra*, 136 Cal.App.3d at p. 896, emphasis in original.)⁷
4 To meet the “reasonable cause” prong of the *Modesto* test, the Board need only establish that its
5 reasons to believe an unfair practice has been committed are neither insubstantial nor frivolous.
6 (*Ibid.*) Even application of novel theories of law will establish “reasonable cause,” so long as the
7 theories are arguable. (*Ibid.*) The second prong of the *Modesto* test is met when the Court
8 determines that injunctive relief is “just and proper”—i.e., that the purposes of the Act would be
9 frustrated absent injunctive relief. (*Ibid.*) Although injunctive relief is an extraordinary remedy, it
10 may be granted whenever either an employer or a union has committed an unfair labor practice
11 which, under the circumstances, would render any final order of PERB meaningless. Moreover,
12 preservation and restoration of the status quo are appropriate considerations in granting temporary
13 relief. (*Ibid.*) Application of the *Modesto* rule to the present case demonstrates that PERB’s
14 requested interim remedy is appropriate here.

15 **A. There is Reasonable Cause to Believe the City Committed an Unfair**
16 **Practice.**

17 In *Seal Beach, supra*, 36 Cal.3d 591, the California Supreme Court held that a city council
18 was required, pursuant to the MMBA, to meet and confer with its public sector unions, before it
19 proposed charter amendments affecting matters within the scope of representation. (*Id.* at p. 602; see
20 also, *County of Santa Clara, supra*, PERB Decision No. 2120-M; *County of Santa Clara, supra*,
21 PERB Decision No. 2114-M [MMBA section 3505 requires public agencies to meet and confer in
22 good faith with employee organizations regarding matters with the scope of representation; when a
23 party seeks to change a matter within the scope of representation through the initiative process, it

24
25 ⁷ Section 10(j) of the National Labor Relations Act (29 U.S.C. § 160(j)), provides that
26 the NLRB has the power, upon issuance of a complaint, to petition a federal district court for
27 appropriate temporary relief or restraining order. The district court has jurisdiction to grant to
28 the Board such temporary relief as it deems just and proper. Because of the similarities between
the NLRA and MMBA, it is appropriate for the Board to use federal labor law precedent for
guidance in interpreting MMBA provisions. (See e.g. *San Diego, supra*, 24 Cal.3d 1; *Fire
Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 616.)

1 must satisfy its duty to bargain prior to placing the matter before the voters].)

2 It is undisputed here that the MEA demanded, and the City refused, to meet and confer over
3 the provisions of the Initiative. Further, there is no dispute that the provisions of the Initiative, if
4 passed, implicate mandatory subjects of bargaining—i.e., matters within the scope of representation,
5 including wages and retirement benefits for current and future employees. (*Mendocino County*
6 *Employees Assn. v. County of Mendocino* (1992) 3 Cal.App.4th 1472, 1478; *Huntington Beach*
7 *Union High School District* (2003) PERB Decision No. 1525; *Oakland Unified School District*
8 (1982) PERB Decision No. 275.)

9 The City has repeatedly asserted that, unlike the instant matter, *Seal Beach, supra*, 36 Cal.3d
10 591, involved charter amendments that were placed on the ballot by a *city council*, whereas the
11 present case involves charter amendments that were placed on the ballot by three *private citizens*.
12 Thus, the City maintains it had no obligation to meet and confer with the MEA about the Initiative.
13 In *City of Monterey* (2005) PERB Decision No. 1766-M, however, the Board held that the city
14 council was “a component of the City Government and act[ed] on behalf of the City under authority
15 of applicable laws and regulations,” and that “it [was] fair to characterize the City Council as an
16 agent of the City and to hold the City responsible for its actions.” (*Ibid.*)

17 In this case, it is undisputed that Mayor Sanders: (1) co-authored the Initiative with
18 Councilmembers Faulconer and DeMaio; (2) partially funded the Initiative through a fund-raising
19 committee he formed with Councilmember Faulconer; and (3) used his Communications Director,
20 his official “State of the City” address, and his official title and authority under San Diego’s “Strong
21 Mayor” form of governance, to garner support for the Initiative. In these circumstances, since
22 Mayor Sanders, along with two members of the City Council and City Attorney Goldsmith, acted as
23 agents of the City, their actions must be attributed to the City. Consequently, Mayor Sanders’ use of
24 the “private citizen initiative process” for the express purpose of avoiding the City’s meet-and-
25 confer obligations with the MEA therefore appear to be in violation of the MMBA. (*Seal Beach,*
26 *supra*, 36 Cal.3d 591.)

27 The City has nevertheless asserted that even if the Mayor did author and solicit support for
28 the Initiative, he did so without City Council involvement or authority. The City, however,

1 ignores the legal definitions of actual and apparent authority; “Actual authority is that which ‘a
2 principal intentionally confers upon the agent, or *intentionally, or by want of ordinary care, allows*
3 *the agent to believe himself to possess.*’ (Civ. Code, § 2316.) Ostensible or apparent authority is
4 that which ‘a principal, *intentionally or by want or ordinary care, causes or allows a third person*
5 *to believe the agent to possess.*’ (Civ. Code, § 2317.)” (*Inglewood Teachers Assn. v. Public*
6 *Employment Relations Bd.* (1991) 227 Cal.App.3d 767, 781 [*Inglewood*], emphasis added; accord,
7 *Chula Vista Elementary School District* (2004) PERB Decision No. 1647.)

8 The appropriate standard articulated in *Inglewood, supra*, is, as follows: “[T]he existence
9 of agency [is determined] on a case-by-case approach on the basis of whether the employees [the
10 electorate in this case] could reasonably believe that the supervisor [Mayor Sanders in this case]
11 was acting within the scope of his or her employment.” In *Inglewood*, a high school principal
12 brought a lawsuit against nine teachers, who were also union members. The court affirmed
13 PERB’s decision finding that the public employer was not responsible for the lawsuit filed by its
14 employee, finding the following facts to be dispositive of the issue of agency: the principal did not
15 discuss the lawsuit with either the superintendent or the governing board of the District prior to
16 filing the complaint, nor at any time afterward (*id.* at p. 772); the Association did not prove that
17 the District knew of the details of the lawsuit, so there was no reason for the District to disavow
18 the suit (*id.* at p. 783); “[t]he only indicia of District involvement in the lawsuit was the use of the
19 school mail system to distribute the complaint to the teachers named as defendants in the suit” (*id.*
20 at 781); and “[s]ince the Association did not prove that the District knew of the details of the
21 lawsuit, there was no reason for the District to disavow the suit” (*id.* at p. 783).

22 Here, by contrast, it readily appears that the City intentionally or by want of ordinary care
23 allowed both Mayor Sanders and the public to believe that Mayor Sanders had the authority to
24 sponsor and garner support for the Initiative on behalf of the City when it allowed him to use his
25 Communications Director, his official “State of the City” address, his official title as City Mayor,
26 and the prestige of his office for this purpose. The City’s conduct is all the more telling as City
27 Attorney Goldsmith had informed Mayor Sanders and City Councilmembers in a July 29, 2010
28 memorandum—before Mayor Sanders first announced in 2010, that he would place an initiative on

1 the ballot that would eliminate defined benefit pensions for new hires—that “[a] city official may not
2 use public resources to support ... a ballot measure or engage in campaign activity,” and that “[a]
3 public official ... should not take part in ballot measure campaigns while on ‘city time’ and should
4 be careful to separate their official work from their political and campaign work.” (Exh. M.) Yet
5 when Mayor Sanders later violated the former prohibitions and failed to meet the latter obligation,
6 neither Goldsmith nor any other City official challenged his actions. In fact, in April 2011,
7 Goldsmith joined Mayor Sanders, Initiative signatories, and others for a press conference under a
8 banner reading “Pension Reform Now!” that was held during normal business hours—i.e., “on ‘City
9 time’”—on the City concourse. (Exh. A, 0005.) City agents, thereby failed “to separate their
10 official work from their political and campaign work.” By allowing this to happen, the City gave
11 Mayor Sanders actual and apparent authority to develop and garner support for the Initiative on
12 behalf of the City.

13 As further evidence of Mayor Sanders’ representations of authority, he himself explained in
14 an article appearing in the December 7, 2011 issue of San Diego CityBeat, that the citizen-initiative
15 route *was chosen in order to avoid negotiations with the unions*—fostering a reasonable belief that
16 this policy, or tactical choice was made on behalf of the City and imputed thereto. (Exh. B.) Thus,
17 unlike the facts in *Inglewood*, here the extraordinary level of publicized involvement from Mayor
18 Sanders, two City Councilmembers, and City Attorney Goldsmith, with clear knowledge imputed to
19 the City, the evidence in this case amply demonstrates that the electorate could reasonably believe
20 that the Mayor was acting on behalf of the City in authoring, sponsoring, promoting, and funding the
21 Initiative.

22 Based on these facts, the court must not permit the City to evade its MMBA obligations by
23 the clever maneuverings of its Strong Mayor, its City Council Members, and its City Attorney in
24 order to, as Mayor Sanders so boldly and publicly told the media, “get the ballot initiative that [we]
25 actually want[ed].... Otherwise we’d have gone through meet-and-confer[.]” As such, reasonable
26 cause exists to believe the City’s conduct constitutes an unfair labor practice. (Exh. B, 0020.)

27 /////
28 /////
29

1 **B. Injunctive Relief is Just and Proper in the Present Case.**

2 1. PERB Proceedings

3 As noted above, the just and proper standard is met when the purposes of the MMBA would
4 be frustrated absent injunctive relief. That is, a final Board order would be meaningless without the
5 relief sought. (*Modesto, supra*, 136 Cal.App.3d at p. 903.) That a final Board order could be
6 rendered meaningless is particularly true in this case where, if passed, the Initiative will have
7 devastating effects on the wages and retirement benefits of current and future employees.

8 In *Modesto*, the Court of Appeal held that “preservation and restoration of the status quo are
9 the appropriate considerations in granting temporary relief pending determination of the issues by
10 the Board,” with the status quo ante defined as “the last uncontested status that preceded the pending
11 controversy.” (*Id.* at p. 902.)⁸ As stated by the Court of Appeal in *Agricultural Labor Relations*
12 *Board v. Ruline Nursery Co.* (1981) 115 Cal.App.3d 1005, 1016-1017 (*Ruline*):

13 If employees who have suffered unfair labor practices must wait, in some instances,
14 years before a final disposition by the Board is rendered, the clear message to
15 remaining employees ... is that the [Board] is not able to meaningfully aid those who
are unlawfully discharged or penalized for participating in collective bargaining.

16 The City is likely to assert that injunctive relief is not “just and proper” here because if the
17 Initiative is approved by the voters in June 2012, there is sufficient opportunity to address the merits
18 of MEA’s claims after the election in quo warranto proceedings. The Initiative, however, states that
19 “[t]his Charter amendment shall become effective in the manner allowed by law.” Under Section
20 27.1045 of the San Diego Municipal Code, “[a] legislative act proposed by an initiative petition ...
21 which has received the requisite number of affirmative votes for adoption shall be effective thirty
22

23 ⁸ The City’s argument that injunctive relief would alter the status quo, rather than preserve it,
24 is misplaced. This argument is based on a single inapposite federal court case, *Boire v. Pilot Freight*
25 *Carriers, Inc.* (5th Cir. 1975) 515 F.2d 1185, where the Court of Appeals affirmed the denial of a
26 request by the NLRB for preliminary injunctive relief in the form of an interim bargaining order
27 pending final determination of the union’s representative status. (*Id.* at pp. 1193-1194.) Here, the
28 controversy was precipitated when Mayor Sanders co-authored, partially funded, and garnered
support for the Initiative, eventually causing it to be placed on the June 5, 2012 ballot. Hence, the
status quo ante is the period before the Initiative was placed on the ballot, and injunctive relief would
appropriately preserve that status.

1 days after the date of the special election, or at the time indicated in the legislative act, whichever is
2 later.” (Italics in original.) With no effective date indicated in the Initiative, it will become
3 effective, if approved, as early as July 5, 2012. It is a virtual certainty that no final Board disposition
4 can be rendered on this charge before that date, and that any remedy the Board may order is likely to
5 be stayed during the lengthy court challenge that is sure to follow.⁹ In these circumstances, the
6 Board will “not [be] able to meaningfully aid” those new employees who in the meantime have been
7 forced into the Defined Contribution Plan, or those current employees who in the meantime have
8 been forced to pay higher employee contributions to the Defined Benefit Plan, or those who have
9 retired with diminished benefits. (See *Ruline, supra*, 115 Cal.App.3d at p. 1017.) This inability to
10 meaningfully aid these employees will “render any final order of the Board meaningless or so devoid
11 of force that the remedial purposes of the Act will be frustrated.” (*Modesto, supra*, 136 Cal.App.3d
12 at pp. 902-903.) Moreover, once the Charter amendment has become effective, a final Board
13 decision by itself, finding the adoption of the Initiative to have been unlawful, even if upheld by the
14 courts, will likely not be able to effect an invalidation of the Charter amendment.

15 2. Election Code Proceedings

16 The Board’s request to enjoin and restrain the City from proceeding with the Initiative also
17 finds support under California election law. As the Courts of Appeal have held, prior to the election,
18 “any person or entity with standing,” such as the Board, “may file a petition for [traditional] writ of
19 mandate, seeking a court order removing the initiative measure from the ballot.” (*Save Stanislaus*
20 *Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, 149 [*Save Stanislaus*].)
21 However, “once those provisions have become effective, their procedural regularity may be attacked
22 only in quo warranto proceedings.” (*Int’l Assn. of Fire Fighters v. City of Oakland* (1985) 174
23 Cal.App.3d 687, 694.) It is clear, however, that a pre-election action may include an attack “on the
24

25 ⁹ Illustrative of this point, in *City of Fresno v. Fresno Firefighters, IAFF Local 753* (1999) 71
26 Cal.App.4th 82, 85 (*City of Fresno*), the court noted that the Attorney General granted the unions
27 involved in that case leave to sue in 1993 (76 Ops. Cal. Atty. Gen. 169 (1993)) after the election was
28 held in 1992, but it was not until 1999 that the Court of Appeal rendered a decision. The quo
warranto process can take a very long time to complete, at which point the remedial purposes of the
MMBA will have been frustrated.

1 ground that prior to its adoption the city had not met and conferred with the designated employee
2 representatives as required by the [MMBA].” (*Id.* at p. 690.)

3 As discussed above, the time that will elapse between the effective date of the Charter
4 amendment and the resolution of quo warranto proceedings will leave the MEA and the employees
5 who are adversely affected by the Charter amendment without “meaningful aid” so that “the
6 remedial purposes of the Act will be frustrated.” (*Ruline, supra*, 115 Cal.App.3d at p. 1017;
7 *Modesto, supra*, 136 Cal.App.3d at p. 903.) Of course, the standard that has to be met by a pre-
8 election challenge to a ballot initiative is an exacting one:

9 The standard is one of great deference to the electorate’s constitutional right to enact
10 laws through the initiative process; a court will remove an initiative from the ballot
11 only “on a compelling showing that a proper case has been established for
12 interfering.” ... “In our view, the court should shortcut the normal initiative
13 procedure only where the invalidity of the proposed measure is clear beyond a
14 doubt.” (Citations omitted.)

15 (*Save Stanislaus, supra*, 13 Cal.App.4th at pp. 146, 150-151 [the court ordered the county to place
16 initiative on ballot].) However, in *Citizens for Responsible Behavior v. Superior Court* (1991) 1
17 Cal.App.4th 1013, the Court of Appeal, while acknowledging that “it is usually more appropriate to
18 review ... challenges to ballot propositions or initiative measures after an election rather than to
19 disrupt the electoral process by preventing the exercise of the people’s franchise, in the absence of
20 some clear showing of invalidity,” nevertheless stated that “we do not believe that this strict rule is
21 inflexible, nor that it should be.” (*Id.* at p. 1022.) The court further stated:

22 [I]f the court is convinced, at any time, that a measure is fatally flawed, it should not
23 matter whether that decision is easy or difficult, simple or complicated. Certainly it
24 would be unconscionable for this court, at this time, to rule in favor of petitioner on
25 the basis that the issue is close—only to be faced with a postelection challenge should
26 the measure pass.

27 (*Ibid.*) The court also noted that “if an initiative ordinance is invalid, no purpose is served by
28 submitting it to the voters,” and was concerned that, “[t]he costs of an election—and of preparing the
29 ballot materials necessary for each measure—are far from insignificant, [as] proponents and
30 opponents of a measure may both expend large sums of money during the election campaign.” In
31 addition, the court observed, “heated rhetoric of an election campaign may open permanent rifts in a

1 community.” (*Id.* at p. 1023.)

2 Here, the court should find that the Initiative is fatally flawed because it was placed on the
3 ballot in violation of the MMBA, and it would be unconscionable for the court to rule against the
4 Board, “only to be faced with a postelection challenge should the measure pass.” This case is of
5 special importance, in that if the Initiative is presented to the electorate, the policy, spirit, and
6 bargaining mandates established by the Legislature and codified in the MMBA will be
7 circumvented. This attempt to side-step the MMBA in the guise of a “citizens’ initiative” will cause
8 nothing short of irreparable harm to the collective bargaining rights provided by public sector labor
9 laws, and will open the floodgates to other equally impermissible attempts elsewhere. In *City of*
10 *Fresno, supra*, the court, although finding in that case that the issues were not within the scope of
11 bargaining, reiterated, “[t]he duty to bargain in good faith established in [the] MMBA is a matter of
12 statewide concern and of overriding legislative policy, and nothing that is or is not in a city’s charter
13 can supersede that duty.” (72 Cal.App.4th at p. 100, citing *Seal Beach, supra*, 36 Cal.3d at p. 600.)

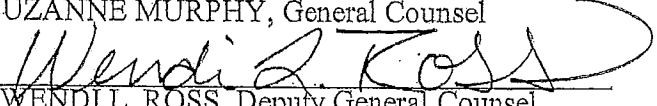
14 Based on the foregoing, well established legal principles, and the balance that must be struck
15 between the rights of the electorate and the duty to bargain in good faith pursuant to the MMBA, the
16 overriding legislative and statewide concerns associated with bargaining rights must prevail. (See
17 *Seal Beach, supra*, 36 Cal.3d at p. 600; *City of Fresno, supra*, 71 Cal.App.4th at p. 100.)
18 Accordingly, the standards for pre-election challenges to ballot initiatives supports PERB’s
19 challenge here. Thus, the “just and proper” standard is met as well.

20 CONCLUSION

21 PERB has plainly met its burden of showing “reasonable cause” to believe the City refused
22 to bargain with the MEA in violation of the MMBA, and that injunctive relief is “just and proper”
23 given the drastic changes to City employees’ wages and retirement benefits. Accordingly, PERB
24 respectfully asks the Court to order the City to remove the Initiative from the June 5, 2012 ballot.

25 Dated: February 14, 2012

Respectfully submitted,
M. SUZANNE MURPHY, General Counsel

26 By 
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28 PUBLIC EMPLOYMENT RELATIONS BOARD

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10 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 PUBLIC EMPLOYMENT RELATIONS
BOARD,
13
14 Plaintiff/Petitioner,
15 v.
16 CITY OF SAN DIEGO,
17 Defendant/Respondent.
18

25 SAN DIEGO MUNICIPAL EMPLOYEES
ASSOCIATION,
26
27 Real Party in Interest.
28

Case No. 37-2012-00092205-CU-MC-CTL

**DECLARATION OF WENDI L. ROSS
IN SUPPORT OF EX PARTE
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION; DECLARATION OF
NOTICE RE EX PARTE HEARING**

IMAGED FILE

Ex Parte Hearing Date:
Date: February 21, 2012
Time: 8:30 a.m.
Dept.: C-67
Judge: Hon. William S. Dato

**Exempt from Fees
(Gov. Code, § 6103)**

RECEIVED
CITY CLERK'S OFFICE
12 FEB 15 AM 9:54
SAN DIEGO, CALIF.
F I Clerk of the Superior Court
FEB 15 2012
By: L. SANNICOLAS, Deputy

1 I, WENDI L. ROSS, hereby declare:

2 1. I am an attorney at law licensed to practice before all of the courts of the State of
3 California. I am currently employed as Deputy General Counsel of and for the Public Employment
4 Relations Board (PERB or Board). As such, I assist in the investigation of all unfair practice charges
5 and requests for injunctive relief filed with the Board. I submit this declaration in support of PERB's
6 Ex Parte Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary
7 Injunction against Defendant City of San Diego, as well as in support of PERB's Complaint for
8 Injunctive Relief; Verified Petition for Writ of Mandate.

9 2. On or about January 31, 2012, San Diego Municipal Employees Association (MEA) filed
10 with PERB an unfair practice charge (UPC), No. LA-CE-746-M, with attached exhibits, alleging
11 conduct by the City of San Diego (City), in particular, a refusal to meet and confer pursuant to the
12 provisions of the Meyers-Milias-Brown Act (MMBA) (Gov. Code, section 3500 et seq.) with MEA
13 regarding a ballot initiative entitled the "Proposition-Charter Amendment/Comprehensive Pension
14 Reform for San Diego" Initiative (Initiative), sponsored by the City's agents, including Mayor Jerry
15 Sanders, which has been placed on the ballot for the June 5, 2012 election. (Exhibit A, which is
16 attached hereto and incorporated herein.)

17 3. On or about January 31, 2012, MEA filed with PERB, a Request for Injunctive Relief (IR
18 Request) No. 615, together with a supporting declaration and exhibits relating to UPC No. LA-CE-
19 746-M, seeking to enjoin the City from placing the Initiative on the June 5, 2012 ballot, and until such
20 time as the City meets its bargaining obligations with the MEA pursuant to the MMBA.

21 4. Attached hereto as Exhibit B and incorporated herein is the January 27, 2012 Declaration
22 of Michael Zucchet, MEA's General Manager, with attached exhibits, which was filed by the MEA in
23 support of IR Request No. 615.

24 5. On or about February 10, 2012, the Office of the General Counsel issued a PERB
25 complaint based on UPC No. LA-CE-746-M, along with a notice scheduling a February 23, 2012
26 informal settlement conference with the parties. (Exhibit I, which is attached hereto and incorporated
27 herein [Administrative Complaint].) The PERB Complaint alleges, in part, that the City violated
28 Government Code section 3505, and California Code of Regulations section 32603(c), based upon

1 evidence that the City's representatives refused to meet and confer in good faith with MEA regarding
2 the provisions of the Initiative that impact wages and retirement benefits for bargaining unit
3 members. (*Ibid.*)

4 6. After completing her investigation of IR Request No 615, the General Counsel made a
5 report to the PERB Board in accordance with California Code of Regulations, title 8, section 32460.
6 On February 10, 2012, the Board granted the Request, and directed the General Counsel's office to:
7 (1) immediately initiate an action for appropriate injunctive and writ relief in San Diego Superior
8 Court; and (2) expedite administrative proceedings on UPC No. LA-CE-746-M. (Exhibit J, which is
9 attached hereto and incorporated herein.)

10 7. On February 10, 2012, I accessed the City Web site (<http://www.sandiego.gov>), which
11 allows users to view and download relevant official City documents, including: City Charter
12 provisions, City Council Policies, City Council Resolutions and Ordinances, Public Notices, and City
13 Council Reports.

14 8. Attached hereto as Exhibit C and incorporated herein are true copies of the "City of San
15 Diego Charter," Articles V (Sections 26 through 64), VII (Sections 68 through 114), IX (Sections 141
16 through 149), and XV (Sections 250 through 295), which I downloaded and printed on or about
17 February 10, 2012 from the City Web site ([http://www.sandiego.gov/city-](http://www.sandiego.gov/city-clerk/officialdocs/legisdocs/charter.shtml)
18 [clerk/officialdocs/legisdocs/charter.shtml](http://www.sandiego.gov/city-clerk/officialdocs/legisdocs/charter.shtml)).

19 9. Attached hereto as Exhibit D and incorporated herein is a true copy of Council Policy 300-
20 6, Employee-Employer Relations, which I downloaded and printed on or about February 10, 2012
21 from the City Web site (http://docs.sandiego.gov/councilpolicies/cpd_300-06.pdf).

22 10. Attached hereto as Exhibit E and incorporated herein is a true copy of City Resolution
23 Number R-307155 (December 5, 2011), which I downloaded and printed on February 10, 2012 from
24 the City Web site (http://docs.sandiego.gov/council_reso_ordinance/rao2011/R-307155.pdf).

25 11. Attached hereto as Exhibit F and incorporated herein is a true copy of City Ordinance
26 Number O-20127 (dated January 30, 2012), which I downloaded and printed on or about February 10,
27 2012 from the City Web site (http://docs.sandiego.gov/council_reso_ordinance/rao2012/O-20127.pdf).

28 12. Attached hereto as Exhibit G and incorporated herein is a true copy of City Resolution

1 Number R-307249 (dated January 30, 2012) that I downloaded and printed on or about February 10,
2 2012 from the City Web site ([http://docs.sandiego.gov/council_reso_ordinance/rao2012/R-](http://docs.sandiego.gov/council_reso_ordinance/rao2012/R-307249.pdf)
3 [307249.pdf](http://docs.sandiego.gov/council_reso_ordinance/rao2012/R-307249.pdf)).

4 13. Attached hereto as Exhibit H and incorporated herein is a true copy of the City's Public
5 Notice, "ITEM -250: Submission of Ballot Proposals for the June 5, 2012 Ballot," dated January 30,
6 2012, which I downloaded and printed on or about February 10, 2012 from the City Web site
7 (<http://www.sandiego.gov/city-clerk/pdf/submissionofballotproposals6512.pdf>).

8 14. Attached hereto as Exhibit K and incorporated herein are true copies of Internet news
9 articles including articles about the three citizens who filed the Initiative with the City: Catherine
10 April Boling, a CPA who has served as campaign treasurer for more than 50 local ballot measures and
11 candidates, including Councilmember Faulconer and City Attorney Jan Goldsmith
12 ([http://www.sandiegomagazine.com/](http://www.sandiegomagazine.com/media/San-Diego-Magazine/April-2008/The-Troubleshooter-the-Accountant)
13 [media/San-Diego-Magazine/April-2008/The-Troubleshooter-the-](http://www.sandiegomagazine.com/media/San-Diego-Magazine/April-2008/The-Troubleshooter-the-Accountant)
14 [Accountant](http://www.sandiegomagazine.com/media/San-Diego-Magazine/April-2008/The-Troubleshooter-the-Accountant) [as of February 9, 2012]); Thomas J. Zane, a professional political consultant who has
15 been involved in numerous campaigns involving local ballot measures and City Council elections
16 ([http://www.sdlincolnclub.org/](http://www.sdlincolnclub.org/about?q=tj-zane-president-ceo)
17 [about?q=tj-zane-president-ceo](http://www.sdlincolnclub.org/about?q=tj-zane-president-ceo) [as of February 9, 2012]); and Stephen
18 B. Williams, a real estate professional (<http://www.sentre.com/bios/sbwilliams> [as of February 9,
19 2012]).

20 15. On February 13, 2012, I notified the counsel who have appeared for the City in the PERB
21 proceedings on UPC No. LA-CE-746-M and IR Request No. 615, Executive Assistant City Attorney
22 Andrew Jones and Joan Dawson, that PERB intended to seek injunctive relief and appear on
23 February 16, 2012, before the San Diego County Superior Court. This notification was provided
24 before the deadline for ex parte notice under California Rules of Court, rule 3.1203(a) (10:00 a.m. on
25 Wednesday, February 15, 2012), by voice-mail messages from me on Mr. Jones' and Ms. Dawson's
26 office phone, (619) 236-6220. PERB additionally transmitted this information by facsimile to Mr.
27 Jones' office, at (619) 236-7215, on February 13, 2012. Attached hereto and incorporated herein is
28 PERB's Verification of Notice. (Exhibit L to this declaration.)

16. On February 14, 2012, PERB staff transmitted to Mr. Jones, the following documents via
electronic mail: Civil Case Cover Sheet; Summons; Complaint for Injunctive Relief and Verified

1 Petition for Writ of Mandate; Ex Parte Application of Plaintiff and Petitioner PERB for: TRO &
2 OSC Regarding a Preliminary Injunction; Memorandum of Points and Authorities in Support of
3 PERB's Ex Parte Application for TRO and OSC Regarding a Preliminary Injunction; Declaration of
4 Wendi L. Ross, with exhibits; [Proposed] temporary restraining order.

5 17. On February 14, 2012, I called Mr. Jones and left a voice-mail message stating that we
6 had scheduled an ex parte hearing in Department 67 on February 21, 2012 at 8:30 a.m.

7 18. Attached hereto as Exhibit M and incorporated herein is a true copy of the June 29, 2010
8 Memorandum from City Attorney to the Mayor and City Councilmembers regarding "Restrictions on
9 the Use of Public Resources for Ballot Measures" that was provided by the City to PERB in its
10 opposition to MEA's request for injunctive relief.

11 I declare under the penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct and that this document was executed on the 14th day of February, 2012,
13 in Sacramento, California.

14 Dated: February 14, 2012


15
16 By 
17 WENDI L. ROSS
18 DEPUTY GENERAL COUNSEL
19 PUBLIC EMPLOYMENT RELATIONS BOARD
20
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23
24
25
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27
28

EXHIBIT D

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8381
Fax: (916) 327-6377



March 9, 2012

Andrew Jones, Executive Assistant City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4100

Adam E. Chaikin, Attorney
Olins, Riviere, Coates & Bagula
2214 2nd Avenue
San Diego, CA 92101

Re: *Deputy City Attorneys Association of San Diego v. City of San Diego*
Injunctive Relief Request No. 617
Unfair Practice Charge No. LA-CE-752-M

Dear Parties:

By direction of a majority of the Board, Member Dowdin Calvillo dissenting, the request for injunctive relief in the above-entitled matter is GRANTED. By further direction of the Board majority, the General Counsel shall: (1) take appropriate action to effectuate this determination in San Diego Superior Court; and (2) expedite the administrative proceedings on Unfair Practice Charge No. LA-CE-752-M.

Sincerely,

M. Suzanne Murphy
General Counsel

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On March 9, 2012, I served the Letter regarding Case No. LA-CE-752-M on the parties listed below by

___ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

___ personal delivery.


facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Andrew Jones, Executive Assistant City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4100
Fax: (619) 236-7215

Adam E. Chaikin, Attorney
Olins, Riviere, Coates & Bagula
2214 2nd Avenue
San Diego, CA 92101
Fax: (619) 272-4309

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 9, 2012, at Sacramento, California.

L. Chisholm
(Type or print name)


(Signature)